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PROPNEX REALTY SDN BHD v. SMALL MEDIUM ENTERPRISE DEVELOPMENT BANK MALAYSIA BHD & ANOTHER APPEAL

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COURT OF APPEAL, PUTRAJAYA
NAZLAN MOHD GHAZALI JCA
AZIMAH OMAR JCA
FAIZAH JAMALUDIN J
[CIVIL APPEAL NOS: W-04(NCvC)(W)-355-09-2023
& W-04(NCvC)(W)-362-09-2023]
25 AUGUST 2025

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Abstract – *Non-compliance with r. 92(1) of the Valuers, Appraisers and Estate Agents Rules 1986 would not render an estate agency contract non-existent. This is aligned with the law of contract which does not require that a contract must be in writing for it to be valid and enforceable, as its existence could be implied from the conduct of the parties and the circumstances of the case.*

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CIVIL PROCEDURE: *Appeal – Judgments – Appeals against judgment of High Court – High Court found no estate agency contract existed between estate agency and client – High Court ordered client to pay estate agency for estate agency services rendered by way of quantum meruit, since estate agency was effective cause of sale of property – Whether High Court decision plainly wrong – Whether non-compliance with r. 92(1) of Valuers, Appraisers and Estate Agents Rules 1986 rendered estate agency contract non-existent – Whether estate agency contract must be in writing for it to be valid and enforceable*

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CONTRACT: *Agreement – Estate agency contract – Estate agency claimed for professional fees for estate agency services rendered to client with respect to sale of property – High Court ordered client to pay estate agency by way of quantum meruit since estate agency was effective cause of sale of property – Whether estate agency contract must be in writing to be valid and enforceable – Valuers, Appraisers and Estate Agents Rules 1986, r. 92(1)*

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The present appeals, Appeal 355 and Appeal 362, arose from the High Court. These appeals involved an estate agency ('Propnex') and its client, a development financial institution ('SME Bank'). At the Sessions Court, Propnex commenced a claim against SME Bank for RM868,140, which among others, comprised of their professional fees, for the estate agency services they rendered to SME Bank, for the sale of its factory located in Sitiawan, Perak ('property'), to Dynacare Sdn Bhd ('Dynacare'). Dynacare was an associate company of George Kent (Malaysia) Bhd ('George Kent'), which was formed for the latter's glove-making business. After the claim was dismissed by the Sessions Court, Propnex filed an appeal to the High Court.

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In allowing the appeal partly, the Judicial Commissioner ('JC') held that, firstly, there was no express estate agency contract between Propnex and SME Bank with respect to the professional fees claimed. In arriving at this decision, the JC reached her determination based on: (i) the fact that the letter of intent dated 11 January 2021 ('LOI') from Propnex to SME Bank was never signed by SME Bank, and that the offer from George Kent to purchase the property would lapse on 10 February 2021; (ii) her finding that Propnex did not comply with r. 92(1) of the Valuers, Appraisers and Estate Agents Rules 1986 ('Rules'); (iii) her interpretation of the law that non-compliance with r. 92(1) would mean that no estate agency contract would exist between an estate agent and his client; and (iv) her finding that there was no response or acceptance by SME Bank to George Kent's offer to purchase the property. Secondly, considering that Propnex was the effective cause of sale of the property to Dynacare, the JC held that Propnex was entitled to be paid by SME Bank by way of *quantum meruit* ('HC's decision'). Dissatisfied, Propnex and SME Bank filed their appeals against the HC's decision. Appeal 355 was filed by Propnex against part of the HC's decision which ordered Propnex to be paid by way of *quantum meruit.* Whereas Appeal 362 was filed by SME Bank against the entirety of the HC's decision. In supporting its appeal, Propnex contended that: (i) there was in existence an estate agency contract between the parties, evidenced from SME Bank's conduct and/or acquiescence; and (ii) since there was a valid contract with respect to the professional fees claimed, and that Propnex was the effective cause of sale of the property, Propnex was entitled to the full payment of the professional fees claimed. On the other hand, SME Bank contended that there was indeed no contract between it and Propnex, and Propnex was merely acting as an 'introducer' in the sale of the property, a fact which was never pleaded by SME Bank. The issues that arose in the present appeals were, whether the JC had made a plainly wrong decision when she held that: (i) there was no estate agency contract between Propnex and SME Bank. In answering this issue, two further questions arose, *ie*, (a) whether non-compliance with r. 92(1) of the Rules would render no estate agency contract exist between an estate agent and his client ('first question'); and (b) whether after the LOI was sent by Propnex to SME Bank, there was no response and or acceptance by the latter to George Kent's offer to purchase the property ('second question'); and (ii) Propnex was the effective cause of sale of the property to Dynacare, thus warranting this court to exercise appellate intervention on the HC's decision.

Held (allowing Appeal 355; dismissing Appeal 362)
Per Faizah Jamaludin JCA delivering the judgment of the court:

(1) The JC cited the cases of *Singham Sulaiman Sdn Bhd v. Mega Palm Sdn Bhd* and *Baldah Toyyibah (Prasarana) Kelantan Sdn Bhd v. Dae Hanguru Infra Sdn Bhd & Another Appeal*. However, these cases could be distinguished from the facts of the present case. In this case, Propnex had

A informed George Kent of the property being available for sale. It even introduced George Kent as a purchaser to SME Bank. Further, George Kent was also informed by Propnex that SME Bank had a factory for sale. Propnex had introduced George Kent to SME Bank and the same had arranged for the site visit by George Kent to the property. Other
B than that, Propnex also conducted two site visits to the property, one by itself, and the other with the representatives of George Kent and SME Bank. (paras 19, 23, 24 & 25)

(2) The JC erred in holding that SME Bank's failure to sign the LOI meant that there was no *consensus ad idem* to appoint Propnex as an estate agent
C in the sale of the property. The JC failed to appreciate r. 92(1) requires a registered estate agent to state the financial obligations in writing, which Propnex did, initially in its WhatsApp message to 'Azzihha' of SME Bank, and subsequently in the LOI. Further, the JC failed to consider that, pursuant to r. 92(1) of the Rules, a registered agent is
D obligated to provide the other party with a copy of the signed agreement only after the latter has executed the agreement. As SME Bank had not signed the LOI, Propnex had not breached the requirement to furnish SME Bank with a copy of the signed LOI. (paras 31-33)

(3) Propnex was the one who introduced the property to George Kent.
E Additionally, Propnex facilitated the introduction between George Kent and SME Bank as a prospective purchaser, and communicated the LOI to SME Bank, detailing both the offered purchase price and the agency's professional fees. Propnex further coordinated with SME Bank to arrange a visit to the property by George Kent. These collective efforts
F ultimately resulted in the acquisition of the property by Dynacare. Other than that, the fact that SME Bank 'ghosted' Propnex after the second site visit, did not necessarily mean that there was no *consensus ad idem* reached by SME Bank and Propnex on the latter's appointment as an estate agent for the sale of the property. (paras 35 & 37)

G **(4)** The JC's determination that non-compliance with r. 92(1) of the Rules impacted the formation and validity of the estate agency contract between Propnex and SME Bank was inconsistent with the Federal Court's decision in *Wong Siew Choong Sdn Bhd v. Anvest Sdn Bhd* ('*Wong*'). Pursuant to the principle of *stare decisis*, the High Court as well
H as this court, were bound by the decisions in *Wong*. Accordingly, the JC fell into error and was plainly wrong in finding that Propnex's purported non-compliance with r. 92(1) of the Rules affected the formation and validity of the estate agency contract between the parties. Taking this and the other reasons into consideration, the first question was answered
I in the negative. (paras 39, 41 & 44)

(5) The JC committed a material error of law by holding that r. 92(1) of the Rules requires an estate agency agreement must be in writing. Its express provision state that a registered agent shall see that the financial obligations and commitments regarding real estate transactions be in writing. It does not state that the agreement must be in writing for it to be valid and enforceable. The JC failed to consider that the law of contract does not require that an agency contract must be in writing as the same can be implied from the conduct of the parties and the circumstances of the case. Additionally, the JC was also wrong in finding that because SME Bank did not sign the LOI, the same could not be liable for Propnex's estate agency fees. That did not depend on whether SME Bank signed the LOI or not, but on whether, from the facts and circumstances of the case, and by the conduct of the parties, there exists an estate agency contract between SME Bank and Propnex. (paras 46 & 47)

(6) The JC committed error by concluding that there was no response or acceptance of George Kent's purchase offer by SME Bank. The facts showed that there was response by SME Bank to the offer. There were numerous meetings between SME Bank and George Kent after the site visit to the property to negotiate the price and terms of the sale of the property from SME Bank to Dynacare. Further, from the WhatsApp conversations between 'Razali' of SME Bank and 'Bryan' of Propnex, it was confirmed that the property had been sold to George Kent. Other than that, the sale and purchase agreement between SME Bank and Dynacare for the property, was the best evidence that there was acceptance of George Kent's offer by SME Bank. (paras 48-50)

(7) There existed a contract for estate agency between Propnex and SME Bank in respect of the sale of the property. Propnex had informed SME Bank in writing of its professional fees of 3% of the purchase price in the WhatsApp message and the LOI. Therefore, the JC was plainly wrong in making a finding of fact that there was no estate agency contract between Propnex and SME Bank in respect of the sale of the property. (paras 52 & 53)

(8) SME Bank submitted that Propnex only introduced George Kent to SME Bank. However, as this point was not pleaded in SME Bank's defence nor addressed to Propnex's witnesses during the trial, it was not open for SME Bank to raise it for the first time at the appeal at the High Court and again before this court. From the available facts and conduct, Propnex was involved beyond the introduction of George Kent to SME Bank and, its involvement was the effective cause of sale of the property to Dynacare. As such, the JC's determination that no estate agency contract existed between Propnex and SME Bank, was plainly wrong. Hence, appellate intervention against the HC's decision was warranted. (paras 56-58)

Case(s) referred to:

Baldah Toyyibah (Prasarana) Kelantan Sdn Bhd v. Dae Hanguru Infra Sdn Bhd & Another Appeal [2020] 5 CLJ 27 CA ***(dist)***

Chew Teng Cheong & Anor v. Pang Choon Kong [1983] 2 CLJ 117; [1983] CLJ (Rep) 86 FC ***(refd)***

Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309 FC ***(refd)***

KGN Jaya Sdn Bhd v. Pan Reliance Sdn Bhd [1996] 2 CLJ 611 CA ***(refd)***

McGraddie v. McGraddie & Anor [2013] 1 WLR 2477 ***(refd)***

Ng Hoo Kui & Anor v. Wendy Tan Lee Peng (Administratrix For The Estate Of Tan Ewe Kwang, Deceased) & Ors [2020] 10 CLJ 1 FC ***(refd)***

Singham Sulaiman Sdn Bhd v. Mega Palm Sdn Bhd [2013] CLJU 569; [2013] 1 LNS 2013 HC ***(dist)***

Tengku Dato' Ibrahim Petra Tengku Indra Petra v. Petra Perdana Bhd & Another Appeal [2018] 2 CLJ 641 FC ***(refd)***

UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor [2010] 9 CLJ 785 FC ***(refd)***

Wong Siew Choong Sdn Bhd v. Anvest Corp Sdn Bhd [1999] 3 CLJ 738 FC ***(refd)***

Legislation referred to:

Valuers, Appraisers and Estate Agents Rules 1986, rr. 92(1), 93(2), Seventh Schedule item C.1

(Appeal No: W-04(NCvC)(W)-355-09-2023)
For the appellant - Lai Yee Fan & Wong Yin Mei; M/s PW Tan & Assocs
For the respondent - Amelda Md Din & Abu Haziq Abu Talib; M/s Amelda & Partners

(Appeal No: W-04(NCvC)(W)-362-09-2023)
For the appellant - Amelda Md Din & Abu Haziq Abu Talib; M/s Amelda & Partners
For the respondent - Lai Yee Fan & Wong Yin Mei; M/s PW Tan & Assocs

[Editor's note: For the High Court judgment, please see Propnex Realty Sdn Bhd v. Small Medium Enterprise Development Bank Malaysia Bhd [2023] 9 CLJ 639 (overruled in part).]

Reported by Syamim Ariffin

JUDGMENT

Faizah Jamaludin J:

Introduction

[1] The two appeals before us – W-04(NCVC)(W)-355-09-2023 ("Appeal 355") and W-04(NCVC)(W)-362-09-2023 ("Appeal 362") – arose from the decision of the Kuala Lumpur High Court in Appeal No: WA-12NCVC-25-02-2023 dated 31 July 2023.

[2] Propnex Realty Sdn Bhd ("Propnex") was the plaintiff at the Sessions Court and the appellant at the High Court. Small Medium Enterprise Development Bank Malaysia Berhad ("SME Bank") was the defendant at the Sessions Court and the respondent at the High Court.

[3] Propnex's claim against SME Bank at the Sessions Court was for the sum of RM868,140, comprising their professional fees in the sum of RM819,000 and 6% sales and services tax (SST) in the sum of RM49,140, for estate agency services rendered in respect of the sale of SME Bank's property, namely a factory located at Lot No. 1558, Jalan Pelabuhan 3, Lumut Industrial Park, Kampung Acheh, 32000 Sitiawan, Perak ("the property"). Propnex's claim was dismissed by the Sessions Court with costs.

[4] The High Court partly allowed Propnex's appeal against the decision of the Sessions Court. The learned Judicial Commissioner ("JC") found that there was no express contract between Propnex and SME Bank as to the professional fees claimed by Propnex as an estate agent in respect of the sale of the property to Dynacare Sdn Bhd ("Dynacare") – an associate company of George Kent (Malaysia) Berhad ("George Kent"). Nonetheless, Her Ladyship found that Propnex was the effective cause of sale of the property to Dynacare, and ordered that SME Bank pays Propnex for the services rendered by way of *quantum meruit*.

[5] Dissatisfied with the decision of the High Court, Propnex filed Appeal 355, and SME Bank filed Appeal 362.

[6] In Appeal 355, Propnex appealed against part of the High Court's decision in ordering that SME Bank pay Propnex's professional fees based on *quantum meruit*. While in Appeal 362, SME Bank appeals against the entire decision of the High Court.

Law On Appellate Intervention

[7] It is a established principle of common law jurisprudence that an appellate court may only interfere with the decision of the trial judge's conclusions on primary facts if it is satisfied that the trial judge was "plainly wrong": see *McGraddie v. McGraddie & Anor* [2013] 1 WLR 2477.

[8] In Malaysia, the Federal Court has held that a "plainly wrong decision" is a decision arrived at due to no or insufficient judicial appreciation of evidence and/or a material error of the law: (see the Federal Court decisions in *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 4 CLJ 309; [2005] 2 MLJ 1; [2004] 6 AMR 781, *UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor* [2010] 9 CLJ 785; [2018] Supp MLJ 363; [2011] 1 AMCR 338, *Tengku Dato' Ibrahim Petra Tengku Indra Petra v. Petra Perdana Bhd & Another Appeal* [2018] 2 CLJ 641; [2018] 2 MLJ 177; [2018] 1 AMR 517, *Ng Hoo Kui & Anor v. Wendy Tan Lee Peng (Administratrix For The Estate Of Tan Ewe Kwang, Deceased) & Ors* [2020] 10 CLJ 1; [2020] 12 MLJ 67; [2020] 8 AMR 227.

[9] Accordingly, in both these appeals, we may only intervene in the decision of the High Court if we are satisfied that the learned JC had arrived at a decision which is plainly wrong, owing to insufficient judicial appreciation of the evidence and/or a material error of the law.

A **Issues**

[10] There are two issues for determination in these appeals:

(i) whether there is a contract for an estate agency between Propnex and SME Bank in respect of the sale of the property?

B (ii) whether Propnex was the effective cause of sale of the property to Dynacare?

Issue (i): Whether There Is A Contract For An Estate Agency Between Propnex And SME Bank In Respect Of The Sale Of The Property?

C **[11]** Propnex's case is that there was a valid appointment of Propnex by SME Bank as an estate agent in respect of the sale of the property, which appointment was evidenced by conduct and/or acquiescence. Propnex argues that as there is a valid contract and based on the High Court's finding that it is the effective cause of sale of the property to Dynacare, Propnex is D entitled to the full payment of its professional estate agency fees and not merely by way of *quantum meruit*.

[12] SME Bank's case is that there was no contract between the parties for the appointment of Propnex as an estate agent for the sale of the property. SME Bank contends that Propnex acted merely as an "introducer": a fact E which was not pleaded in SME Bank's defence or suggested to Propnex's witnesses during the trial.

[13] Propnex is an estate agency registered with the Board of Valuers, Appraisers, Estate Agents and Property Managers ("the Board") under the Valuers, Appraisers, Estate Agents and Property Managers Act 1981 (Act F 242) ("VAEAPM Act 1981"). SME Bank is a development financial institution and a prescribed institution under the Development Financial Institutions Act 2002 (Act 618).

[14] The High Court agreed with the finding of fact made by Sessions Court that no estate agency contract existed between the parties. As indicated in her G grounds of judgment, the learned JC reached this determination based on:

(i) the fact that the letter of intent dated 11 January 2021 ("LOI") from Propnex to SME Bank was not signed by SME Bank, and had stated that the offer from George Kent to purchase the property will lapse on H 10 February 2021;

(ii) her finding that Propnex did not comply with r. 92(1) of the Valuers, Appraisers and Estate Agents Rules 1986 (PU(A) 64/1986) ("VAEA Rules 1986");

(iii) her interpretation of the law that non-compliance of r. 92(1) of the I VAEA Rules 1986 means that no estate agency contract exists between the estate agent and his client; and

(iv) her finding that there was no response or acceptance by SME Bank to George Kent's offer to purchase the property.

[15] To determine whether the High Court was not plainly wrong in finding that a contract for estate agency did not exist between Propnex and SME Bank for the sale of the property, this court must answer these two questions: (i) whether non-compliance of r. 92(1) of the VAEA Rules 1986 means no estate agency contract exists between the estate agent and his client; and (ii) whether after the LOI was sent by Propnex to SME Bank, there was no response or acceptance by SME Bank to George Kent's offer to purchase the property.

(a) Does Non-compliance Of r. 92(1) Of The VAEA Rules 1986 Mean No Estate Agency Contract Exists Between An Estate Agent And His Client?

[16] Rule 92(1) is in Part X: Code of Conduct and Ethics (Registered Estate Agent) of the VAEA Rules 1986. It reads:

> 92. Financial Obligations
>
> (1) A registered estate agent shall, for the protection of all parties, see that financial obligations and commitments regarding real estate transactions are in writing expressing the exact agreement of the parties and a copy of each such agreement shall be furnished to each party upon his signing such agreement.

[17] Based on its natural and ordinary meaning, r. 92(1) of the VAEA Rules 1986 requires a registered estate agent to:

(i) ensure that the financial obligations and commitments regarding real estate transactions are in writing; and

(ii) furnish each party with a copy of the agreement upon the said party signing the agreement.

[18] The learned JC had cited the cases of *Singham Sulaiman Sdn Bhd v. Mega Palm Sdn Bhd* [2013] CLJU 569; [2013] 1 LNS 569; [2014] 7 MLJ 476; [2013] 2 AMCR 435 ("*Singham Sulaiman*"); and *Baldah Toyyibah (Prasarana) Kelantan Sdn Bhd v. Dae Hanguru Infra Sdn Bhd & Another Appeal* [2020] 5 CLJ 27; [2020] 5 MLJ 630 ("*Baldah Toyyibah*") to decide that as SME Bank did not sign the LOI, the requirements in r. 92(1) of the VAEA Rules 1986 was not complied with, and for this reason found that there was no estate agency contract between Propnex and SME Bank.

[19] The facts in both *Singham Sulaiman* and *Baldah Toyyibah* can be distinguished from the facts in this instant case.

[20] In *Singham Sulaiman*, the evidence shows that Dato' CS Ong – the chief executive officer of Country Height's property development division – merely informed the plaintiff's deputy chairman and executive director, Sulaiman Mustafa, of the properties in the Country Heights group of

companies that were available for sale – upon Sulaiman's inquiry. The understanding was for Sulaiman to revert to Dato' CS Ong if he had interested buyers for any of the properties of the group in order to take instructions on the sale price and to agree on the plaintiff's fee. Neither Sulaiman nor the plaintiff reverted to Dato' CS Ong to inform him that Mayland was an interested purchaser and to get instructions on the sale price of the lands. The evidence showed that the person who introduced the lands to Mayland was Tan Sri Lee Kim Yew of the Country Heights group of companies and not Sulaiman and/or the plaintiff.

[21] In *Baldah Toyyibah*, the respondent brought an action against the appellant for breach of contract regarding the construction of the Kota Bharu-Kuala Krai Highway Project ("KBKK Highway Project"). The subject agreement in *Baldah Toyyibah* was the construction of a highway. It was not a contract for the provision of estate agency services. Therefore, neither the VAEAPM Act 1981 nor the VAEA Rules 1986 applied in *Baldah Toyyibah*.

[22] Furthermore, the contract in *Baldah Toyyibah*, as evidenced by the letter of intent and the letter of acceptance, was made between the first appellant and the consortium members. This court determined that the respondent was not a member of the consortium at the time the contract was formed, as it had not yet been incorporated. We concluded that *consensus ad idem* could not have existed between the first appellant and the respondent, which did not legally exist when the agreement for the KBKK Highway Project was reached.

[23] Whereas in this instant case, Propnex had informed George Kent of the property being available for sale. It had also introduced George Kent as a purchaser of the property to SME Bank. Ng Kok Kin (SSP1) who at the material time was employed by George Kent, confirmed during the trial that Propnex had contacted him as regards the property. Ng Kok Kin testified that he was informed about the availability of the property for sale by either Bryan Yeo (SP1) or Danny Gan (SP2) of Propnex.

[24] Phoon Yee Han (SSP2) informed the trial court that he is a general manager in charge of the Chairman's office in George Kent and is a director of Dynacare. He also testified that George Kent was informed by Propnex that SME Bank had a factory for sale, also that Propnex had introduced George Kent to SME Bank and had arranged for the site visit by George Kent of the property.

[25] Propnex had conducted two site visits to the property, one by itself and the second with George Kent and SME Bank. Before sending the LOI to SME Bank, Propnex had visited the property on 8 January 2021 ("first site visit"). It had also arranged for a site visit of the property by George

Kent, together with representatives from SME Bank on 16 January 2021 ("second site visit"). Because the site visits were during the COVID-19 pandemic and the Government's Mandatory Control Order (MCO), Propnex had to seek permits from the relevant authorities to cross states from Selangor to Lumut, Perak, where the property was located.

[26] After the first site visit, Bryan Yeo of Propnex ("Bryan") ("SP1") informed Mohd Razali Malek ("Razali") ("SD1") of SME Bank of the visit by WhatsApp message. Razali replied to ask how the visit was and whether Propnex's client was keen. Below is an excerpt of the Byran and Razali's WhatsApp message:

Friday, 08.01.2021	
Bryan:	Hi Razali, we already viewed the Factory. Thanks for the arrangement.
Razali:	Ok good to hear tht So how was it Did yr client keen
Bryan:	Potential, we need more support documents to present to management. Taken necessary photo and power supply.

[27] The second site visit of the property took place on 16 January 2021. It was attended by George Kent's chairman, Tan Sri Tan Kay Hock, Ng Kok Kin and Phoon Yee Han. Ng Kok Kin and Phoon Yee Han both testified during the trial that the persons from George Kent who visited the property during the second site visit was its Chairman, Tan Sri Tan Kay Hock and themselves.

[28] As regards its professional fees, Propnex had informed SME Bank, in writing, twice, that its estate agency professional fee is 3% of the selling price: the first time, on 4 January 2021 in a WhatsApp message sent by Bryan to Azzihha Azura Abd Aziz of SME Bank ("Azzihha") ("SSD1") and the second time, on 11 January 2011 in the LOI. In the LOI, Propnex informed SME Bank in writing:

(i) that Propnex had introduced and marketed the property and the purchaser has "shown an interest in pursuing the matter further", of which Propnex "will then assist in negotiating all terms and conditions";

(ii) the purchaser who has shown an interest in purchasing the property is George Kent;

(iii) the purchase price offered by George Kent is RM27,300,000. As the quoted selling price is RM28,500,000, Propnex "will try to achieve highest possible price" for SME Bank;

(iv) Propnex's real estate professional fee of RM819,000; and

(v) George Kent's offer will lapse after 10 February 2021.

[29] Under cross-examination, Ng Kok Kin (SSP1) confirmed that George Kent was looking for a factory to accommodate its venture into the glove-making business. He testified that Dynacare was an associate company of George Kent formed for the purpose of its glove-making business. Phoon Yee Han (SSP2) confirmed that Dynacare was a newly set-up special purpose joint venture company between George Kent and Johan Holdings Berhad, and that George Kent owns 40% of shares in Dynacare.

[30] SME Bank after receiving the WhatsApp messages from Propnex and LOI, forwarded further information relating to the property. Azzihha and Razali of SME Bank attended the second site visit with Bryan and Gan of Propnex together with the representatives from George Kent.

[31] Considering the facts of this case and r. 92(1) of the VAEA Rules 1986, we find the learned JC erred in holding – based on r. 92(1) and the cases of *Singham Sulaiman* and *Baldah Toyyibah* – that SME Bank's failure to sign the LOI meant there was no *consensus ad idem* to appoint Propnex as estate agent for the property sale.

[32] Her Ladyship failed to appreciate that r. 92(1) of the VAEA Rules 1986 requires that a registered estate agent to state the financial obligations in writing, which Propnex did: initially in its WhatsApp message of 4 January 2021 to Azzihha, and subsequently in the LOI.

[33] Furthermore, the learned JC did not take into account that, pursuant to r. 92(1) of the VAEA Rules 1986, a registered agent is obligated to provide the other party with a copy of the signed agreement only after the latter has executed the agreement. In this instance, as SME Bank had not signed the LOI, Propnex was not in breach of the requirement to furnish SME Bank with a copy of the signed LOI.

[34] Additionally, the learned JC did not sufficiently consider that the letter of intent in *Baldah Toyyibah* pertained to the construction of a highway and therefore was not subject to the VAEAPM Act 1981 or the VAEA Rules 1986. Furthermore, Her Ladyship did not take into account the fact that, in *Singham Sulaiman*, the plaintiff's fee was neither communicated orally nor in writing to the defendant, and the plaintiff did not introduce the available lands for sale to the purchaser, which contrasts with the circumstances of the present case.

[35] Here, Propnex was one who introduced the property to George Kent. Additionally, Propnex facilitated the introduction between George Kent and SME Bank as a prospective purchaser, and communicated the LOI to SME Bank, detailing both the offered purchase price and the agency's professional

fees. Furthermore, Propnex coordinated with SME Bank to arrange a site visit to the property by George Kent. These collective efforts ultimately resulted in the acquisition of the property by Dynacare, an associate company of George Kent, which will utilise the property for its glove manufacturing operations.

[36] Phoon Yee Han (SSP2), who was Dynacare's signatory in the sale and purchase agreement between Dynacare and SME Bank for the purchase of the property ("SPA"), testified that the SPA was the result of a series of negotiations starting from when Propnex introduced George Kent to the property until the completion of the transaction.

[37] The fact that SME Bank "ghosted" Propnex after the second site visit by not letting it be involved in the meeting on 18 January 2021 with George Kent and not informing it of the on-going negotiations between SME Bank and George Kent for sale and purchase of the property until Razali's reply to Bryan's WhatsApp query on 22 March 2021, does not mean there was no *consensus ad idem* reached by the SME Bank and Propnex on the appointment of Propnex as estate agent for the sale of the property.

[38] Furthermore, r. 92(1) of the VAEA Rules 1986, expressly states that the requirement for the financial obligations to be in writing is "for the protection of all parties". It does not state that without the written agreement, there is no estate agency contract between the parties. Moreover, r. 92(1) is in Part X: Code of Conduct and Ethics (Registered Estate Agent), which regulates the conduct and ethics of registered estate agents; not the validity of estate agency contracts.

[39] Importantly, the learned JC's determination that non-compliance with r. 92(1) of the VAEA Rules 1986 impacted the formation and validity of the estate agency contract between Propnex and SME Bank is inconsistent with the Federal Court's decision in *Wong Siew Choong Sdn Bhd v. Anvest Corp Sdn Bhd* [1999] 3 CLJ 738; [1999] 3 MLJ 577; [1999] 3 AMR 3345.

[40] The Federal Court in *Wong Siew Choong* considered whether non-compliance by an estate agent with r. 93(2) of the VAEA Rules 1986 would invalidate an estate agency agreement. The Court determined that r. 93(2), which is also in Part X of the VAEA Rules 1986, concerns the professional conduct of estate agents. It held a breach of this rule may subject the registered estate agent to disciplinary action but does not impact the formation or validity of the contract. Chong Siew Fai CJ (Sabah & Sarawak), delivering the judgment of the Federal Court, stated:

> On the question of breach of r. 93(2) of the Valuers, Appraisers and Estate Agents Rules 1986 by the estate agent, we agree that r. 93(2) relates to the professional conduct of an estate agent, a breach thereof would

render it liable to punishment. On the facts and the circumstances of this case, we agree with the Court of Appeal that the breach would not affect the formation and validity of the contract.

[41] Pursuant to the principle of *stare decisis*, the High Court as well as this court is bound by the decisions of the Federal Court. Accordingly, we find that the learned JC fell into error and was plainly wrong in finding that Propnex's purported non-compliance of r. 92(1) of the VAEA Rules 1986 affected the formation and validity of an estate agency contract between the parties. In doing so, Her Ladyship failed to follow the decision of the Federal Court in *Wong Siew Choong* as regards the non-compliance of the rules in Part X of the VAEA Rules 1986.

[42] Additionally, it is a settled principle of contract law that a contract can be evidenced in writing, orally or by conduct of the parties. Statutory provisions relating to the appointment and authority of agents and sub-agents are contained in Part X of the Contracts Act 1950. None of the provisions in Part X require that the appointment of an agent or sub-agent be in writing or evidenced in writing. In *KGN Jaya Sdn Bhd v. Pan Reliance Sdn Bhd* [1996] 2 CLJ 611; [1996] 1 MLJ 233; [1996] 1 AMR 839 Gopal Sri Ram JCA (as he then was) said:

> *In the first place, the law does not require that an agency or subagency agreement must be in writing.* See *Bowstead & Reynolds on Agency* (17th Ed) at p 55 *et seq*.
>
> *Further, Part X of the Contracts Act 1950, which contains the relevant provisions on agency does not contain any requirement that the appointment of an agent or sub-agent has to be in writing or be evidenced in writing. Hence the appointment may be express or implied, that is to say, it may be gathered from the facts and circumstances of a case and from the conduct of the parties:* see, *Kuchwar Lime & Stone Co v. Dehri Rohtas Light Railway & Co Ltd* AIR 1969 SC 193.
>
> (emphasis added)

[43] Tan Cheng Han SC in his book, *Law of Agency*, Academy Publishing, 2010 states:

> Agency created by agreement can arise expressly or impliedly by the words and conduct of the principal and agent. The creation of an agency relationship is not limited to express words used. **Like other contractual arrangements, a relationship of principal and agent can be implied from circumstances.** (emphasis added)

[44] Therefore, for the above reasons, we find that the answer to the question of whether non-compliance of r. 92(1) of the VAEA Rules 1986 means no estate agency contract exists, is in the negative.

(b) After The LOI Was Emailed By Propnex To SME Bank, Was There No Response Or Acceptance By SME Bank To George Kent's Offer To Purchase The Property?

[45] The learned JC made a finding of fact that there was no response or acceptance by SME Bank of the offer made by George Kent in LOI. Her Ladyship in para. 17 of her grounds of judgment said:

> 17. As such, in the absence of a duly executed LOI, the Respondent cannot be made liable to pay the fees as claimed by the Appellant. In this regard, the court agrees that the LOI had lapsed, effectively expired and became automatically null and void when there was no response or acceptance of the purchase offer from the Respondent to George Kent. Obviously, there was no contracts in writing as required under Rule 92(1) of VAEAR.

[46] For the reasons discussed in issue (1)(a) above, we find that Her Ladyship had committed a material error of the law by holding that r. 92(1) of the VAEA Rules 1986 requires that an estate agency agreement be in writing. The express provisions in r. 92(1) is that a registered agent shall see that the financial obligations and commitments regarding real estate transactions be in writing. It does not state that an estate agency agreement must be in writing in order to be valid and enforceable. Her Ladyship also failed to take into account that the law of contract does not require that an agency agreement to be in writing and can be implied from the conduct of the parties and circumstances of the case.

[47] Additionally, the learned JC was wrong to find that because SME Bank did not sign the LOI, SME Bank cannot be liable for Propnex's estate agency fees. Whether SME Bank is liable for the estate agency fees does not depend on whether it signed the LOI or not. It depends on whether, from the facts and circumstances of the case and by the conduct of the parties, there exists an estate agency agreement between SME Bank and Propnex: see Part X of the Contracts Act 1950; *KGN Jaya Sdn Bhd v. Pan Reliance Sdn Bhd* (*supra*).

[48] Furthermore, the learned JC was wrong to conclude that there was no response or acceptance of George Kent's purchase offer by SME Bank. The facts show that there was response by SME Bank to the offer. Phoon Yee Han (SSP2) testified there were numerous meetings between SME Bank and George Kent after the site visit to the property on 16 January 2021 to negotiate the price and the terms of the sale of the property from SME Bank to George Kent's associate company, Dynacare.

[49] Also, as confirmed by Razali to Bryan, the property was sold to George Kent. Below is an excerpt of the WhatsApp conversation between Razali and Bryan on 22 March 2021, 5 April 2021, 12 April 2021 and 14 April 2021:

Monday, 22.03.2021	
Bryan:	Good evening Razali, is the lumut factory stil open for sale? I have another Glove maker looking
Razali:	Evening Bryan. I'm sorry. george kent is buying actually. Now pending conclusion of SPA terms.
Bryan:	Ok, let us know if you need further assistance and waiting your update.

Monday, 05.04.2021	
Bryan:	Hi Razali, I read the news that Gkent already make announcement about the acquisition of the Lumut Factory. Congratulations of selling the factory.
Razali:	Congrats to our Legal Dept. Not me. Our Legal took over the process
Bryan:	How can we claim the referral fee for this case ya?

Monday, 12.04.2021	
Bryan:	Hi Razali, let me know when you free to talk ya? Thanks

Wednesday, 14.04.2021	
Razali:	Hi bryan ... sorry for not able to talk due to my busy schedule since im No longer in charge of FM … with regards to the referral fee, why don't u write to us n detail out justification for the referral fee since the sales alrdy concluded. The we can putforth the request subject to our mngmt approval. Thanks
Bryan:	Thank Razali for your feedback. I will write to you organisation for the matter.

[50] Furthermore, the sale and purchase agreement dated 29 March 2021 between SME Bank and the purchaser, Dynacare – an associate company of George Kent that was specially incorporated for its glove-making business to be carried out at the factory on the property – for the purchase price of RM27,300,000 (which was the price offered by George Kent in the LOI) is the best evidence that there was acceptance of George Kent's offer by SME Bank.

Findings On Issue (i)

[51] Accordingly, based on the above analysis of the facts and circumstances of this case and the conduct of parties, we find that there exists a contract for estate agency between Propnex and SME Bank in respect of the sale of the property.

[52] We further find that Propnex had informed SME Bank in writing of its professional fees of 3% of the purchase price in the WhatsApp message dated 4 January 2021 and the LOI. The said fee is in accordance with the Seventh Schedule, item C.1 of the VAEA Rules 1986, which provides that the maximum fees for estate agency for the sale or purchase of land and buildings is 3%.

[53] Therefore, we find that the learned JC was plainly wrong in making a finding of fact that there was no contract for estate agency between Propnex and SME Bank in respect of the sale of the property.

Issue (ii): Whether Propnex Was The Effective Cause Of Sale Of The Property To Dynacare?

[54] Raja Azlan Shah CJ (Malaya) (as he then was) in *Chew Teng Cheong & Anor v. Pang Choon Kong* [1983] 2 CLJ 117; [1983] CLJ (Rep) 86; [1981] 1 MLJ 298 said the following with regards to estate agents' remuneration:

> The law to be applied is therefore the law of estate agents. *Where the agency contract provides that the agent earns his remuneration upon bringing about a certain transaction, he will be entitled to such remuneration if he is the effective, not necessarily the immediate cause of the transaction being brought about.* Whether there is a sufficient connection between his act and the ultimate transaction must be ascertained from the facts of the case. The effectiveness of the agent's work is a matter of inference from the evidence per McGregor J in *Sushames v. Cumming* [1962] NZLR 920 at p. 925. *Where the agent can show that some act of his was the causa causans of the transaction (Tribev. Taylor [1876] 1 CPD 505, 510) or was an efficient cause of the sale (Miller v. Radford [1903] 19 TLR 575), he is entitled to his agreed remuneration.* (emphasis added)

Findings On Issue (ii)

[55] Based on the facts and circumstances of the case, we agree with the learned High Court JC that Propnex was the *causa causans* – the effective cause of the sale of the property by SME Bank to Dynacare.

[56] Counsel for SME Bank submitted that Propnex only introduced George Kent to SME Bank. However, as this point was not pleaded in SME Bank's defence nor addressed to Propnex's witness during the trial, it is not open for SME Bank to raise it for the first time at the appeal at the High Court and again before us.

[57] We find that available facts and conduct show that Propnex was involved beyond the introduction of George Kent to SME Bank. Propnex's involvement was the effective cause to the sale of the property to Dynacare, an associate company of George Kent established for glove manufacturing at the property.

A

Conclusion

[58] Upon thorough review of the evidence and relevant laws, we respectfully find that the learned JC's determination – specifically, that no contract of estate agency existed between Propnex and SME Bank concerning the sale of the property – was plainly wrong. For this reason, appellate intervention in the decision is warranted.

B

Decision

[59] Accordingly, we allow Propnex's appeal in Appeal 355 and dismiss SME Bank's appeal in Appeal 362. The order of the High Court that the payment of Propnex's services is by way of *quantum meruit* is set-aside.

C

[60] It is ordered that SME Bank pay Propnex an estate agency fee of RM819,000, which constitutes 3% of the property's purchase price of RM27,300,000. Propnex's claim for 6% SST on the estate agency fee, amounting to RM49,140, is not allowed, as this sum was not specified in the WhatsApp message of 4 January 2021 or in the LOI.

D

[61] Interest at the rate of 5% of the judgment sum from the date of judgment until full settlement.

[62] For Appeal 355, costs in the sum of RM30,000 here and below, subject to allocatur.

E

[63] For Appeal 362, costs in the sum of RM20,000 here and below, subject to allocatur.

F

G

H

I